Public Law 100-300
100th Congress
[H.R. 3971, 29 Apr 19881

42 USC 11601 et seq

An Act

To establish procedures to implement the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "International Child Abduction Remedies Act".

SEC. 2. FINDINGS AND DECLARATIONS [42 USC 11601]

(a) Findings.--The Congress makes the following findings:

(1) The international abduction or wrongful retention of children is harmful to their well-being.

(2) Persons should not be permitted to obtain custody of children by virtue of their wrongful removal or retention.

(3) International abductions and retentions of children are increasing, and only concerted cooperation pursuant to an international agreement can effectively combat this problem.

(4) The Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, establishes legal rights and procedures for the prompt return of children who have been wrongfully removed or retained, as well as for securing the exercise of visitation rights. Children who are wrongfully removed or retained within the meaning of the Convention are to be promptly returned unless one of the narrow exceptions set forth in the Convention applies. The Convention provides a sound treaty framework to help resolve the problem of international abduction and retention of children and will deter such wrongful removals and retentions.

(b) DECLARATIONS. -The Congress makes the following declarations:

(1) It is the purpose of this Act to establish procedures for the implementation of the Convention in the United States.

(2) The provisions of this Act are in addition to and not in lieu of the provisions of the Convention.

(3) In enacting this Act the Congress recognizes

(A) the international character of the Convention; and

(B) the need for uniform international interpretation of the Convention.

(4) The Convention and this Act empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims.

SEC. 3. DEFINITIONS. (42 USC 116021

For the purposes of this Act-

(1) the term "applicant" means any person who, pursuant to the Convention, files an application with the United States Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention; International Child Abduction, done at The Hague on October 25, 1980;

(2) the term "Convention" means the Convention on the Civil Aspects of

(3) the term "Parent Locator Service" means the service established by the Secretary of Health and Human Services under section 453 of the Social Security Act (42 U.S.C. 653);

(4) the term "Petitioner" means any person who, in accordance with this Act, files a petition in court seeking relief under the Convention

(5) the term "person" includes any individual, institution, or other legal entity or other legal entity or body

(6) the term "respondent" means any person against whose interests a petition is filed in court, in accordance with this Act, which seeks relief under the Convention;

(7) the term "rights of access" means visitation rights;

(8) the term "State" means any of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term "United States Central Authority" means the agency of the Federal Government designated by the President under section 7(a)

SEC. 4. JUDICIAL REMEDIES. [42 USC 11603] .

(a) JURISDICTION OF THE COURTS.-The courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention.

(b) PETITIONS.-Any person seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise it's jurisdiction in the place where the child is located at the time the petition is filed.

(c) NOTICE.-Notice of an action brought under subsection (b) shall be given in accordance with the applicable law governing notice in interstate child custody proceedings.

(d) DETERMINATION OF CASE.-The court in which an action is brought under subsection (b) shall decide the case in accordance with the Convention.

(e) BURDENS OF PROOF.-(1) A petitioner in an action brought under subsection (b) shall establish by a preponderance of the evidence-

(A) in the case of an action for the return of a child, that the child has been wrongfully removed or retained within the

meaning of the Convention; and

(B) in the case of an action for arrangements for organizing or securing the effective exercise of rights of access, that the petitioner has such rights.

(2) In the case of an action for the return of a child, a respondent who opposes the return of the child has the burden of establishing-

(A) by clear and convincing evidence that one of the exceptions set forth in article 13b or 20 of the Convention applies; and

(B) by a preponderance of the evidence that any other exception set forth in article 12 or 13 of the Convention applies.

(f) APPLICATION OF THE CONVENTION.-For purposes of any action brought under this Act-

(1) the term "authorities", as used in article 15 of the Convention to refer to the authorities of the state of the habitual residence of a child, includes courts and appropriate government agencies:

(2) the terms "wrongful removal or retention" and "wrongfully removed or retained", as used in the Convention, include a removal or retention of a child before the entry of a custody order regarding that child; and

(3) the term "commencement ot proceedings", as used in article 12 of the Convention, means, with respect to the return of a child located in the United States, the filing of a petition in accordance with subsection (b) of this section.

(g) FULL FAITH AND CREDIT. -Full faith and credit shall be

accorded by the courts of the states and the courts of the United States to the judgment of any other such court ordering or denying the return of a child, pursuant to the Convention, in an action brought under this Act.

(h) REMEDIES UNDER THE CONVENTION NOT EXCLUSIVE.-The remedies established by the Convention and this Act shall be in addition to remedies available under other laws or international agreements.

SEC. 5. PROVISIONAL REMEDIES. [42 USC 11604]

(a) AUTHORITY OF COURTS.-In furtherance of the objectives of article 7(b) and other provisions of the Convention, and subject to the provisions of subsection (b) of this section, any court exercising jurisdiction of an action brought underrsection 4(b) of this Act may take or cause to be taken measures under Federal or State law, as appropriate, to protect the well-being of the child involved or to prevent the further removal or concealment before the final disposition of the petition.

(b) LIMITATION ON AUTHORITY.-No court exercising jurisdiction of an action brought under section 4(b) may, under subsection (a) of this section, order a child removed from a person having physical control of the child unless the applicable requirements of State law are satisfied.

SEC. 6. ADMISSIBILITY OF DOCUMENTS. [42 USC 11605]

With respect to any application to the United States Central Authority, or any petition to a court under section 4, which seeks relief under the Convention, or any other documents or information included with such application or petition or provided after such submission which relates to the application

or petition, as the case may be, no authentication of such application, petition, document, or information shall be required in order for the application, petition, document, or information to be admissible in court.

SEC. 7. UNITED STATES CENTRAL AUTHORITY. [42 USC 11606]

(a) DESIGNATION.-The President shall designate a Federal agency to serve as the Central Authority for the United States under the Convention.

(b) FUNCTIONS.-The functions of the United States Central Authority are those ascribed to the Central Authority by tie Convention and this Act.

(c) REGULATORY AUTHORITY.-The United States Central Authority is authorized to issue such regulations as may be necessary to carry out its functions under the Convention and this Act.

(d) OBTAINING INFORMATION FROM PARENT LOCATOR SERVICE. The United States Central Authority may, to the extent authorized by the Social Security Act, obtain information from the Parent Locator Service.

SEC. 8. COSTS AND FEES. [42 USC 116071

(a) ADMINISTRATIVE COSTS. -No department, agency, or instrumentality of the Federal Government or of any State or local government may impose on an applicant any fee in relation to the administrative processing of applications submitted under the Convention.

(b) COSTS INCURRED IN CIVIL ACTIONS.-(I) Petitioners may be required to bear the costs of legal counsel or advisors, court costs incurred in connection with their petitions, and travel costs for the return of the child involved and any accompanying persons, except as provided in paragraphs (2) and (3).

(2) Subject to paragraph (3), legal fees or court costs incurred in connection with an action brought under section 4 shall be borne by the petitioner unless they are covered by payments from Federal State, or local legal assistance or other programs.

(3) Any court~ordering the return of a child pursuant to an action brought under section 9 shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of proceedings in the action, and

transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate.

SEC. 9. COLLECTION, MAINTENANCE, AND DISSEMINATION OF INFORMATION. (42 USC 11608]

(a) IN GENERAL.-In performing its functions under the Convention, the United States Central Authority may, under such conditions as the Central Authority prescribes by regulation, but subject to subsection (c), receive from or transmit to any department, agency, or instrumentality of the Federal Government or of any State or foreign government, and receive from or transmit to any applicant, petitioner, or respondent, information necessary to locate a child or for the purpose of otherwise implementing the Convention with respect to a child, except that the United States Central

Authority-

(I) may receive such information from a Federal or State department, agency, or instrumentality only pursuant to applicable Federal and State statutes; and

(2) may transmit any information received under this subsection notwithstanding any provision of law other than this Act.

(b) REQUESTS FOR INFORMATION.-Requests for *information under* this section shall be submitted in such manner and form as the United States Central Authority may prescribe by regulation and shall be accompanied or supported by such documents as the United States Central Authority may require.

(c) RESPONSIBILITY OF GOVERNMENT ENTITIES.-Whenever any department, agency, or instrumental of the United States or of any State receives a request from the United States Central Authority for information authorized to be provided to such Central Authority under subsection (a), the head of such department, agency, or instrumentality shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality in order to determine whether the information requested is contained in any such files or records. If such search discloses the information requested, the head of such department, agency, or instrumentality shall immediately transmit such information to the United States Central Authority, except that any such information the disclosure of which-

(1) would adversely affect the national security interests of the United States or the law enforcement interests of United States or of any State: or

(2) would be prohibited by section 9 of title 13, United States enforcement Code; shall not be transmitted to the Central Authority. The head of such department, agency, or instrumentality shall, immediately upon completion of the requested search, notify the Central Authority of the results of the search, and whether an exception set forth in paragraph (1) or (2) applies. In the event that the United States Central Authority receives information and the appropriate Federal or State department, agency, or instrumentality thereafter notifies the Central Authority that an exception set forth in paragraph (1) or (2) applies to that information, the Central Authority may not disclose that information under subsection (a).

(d) INFORMATION AVAILABLE FROM PARENT LOCATOR SERVICE. -To the extent that information which the United States Central Authority is authorized to obtain under the provisions of subsection (c) can be obtained through the Parent Locator Service, the United States Central Authority shall first seek to obtain such information from the Parent Locator Service, before requesting such information directly under the provisions of subsection (c) of this section.

(e) RECORDKEEPING.-The United States Central Authority shall maintain appropriate records concerning its activities and the disposition of cases brought to its attention.

SEC. 10. INTERAGENCY COORDINATING GROUP. [42 USC 11609]

The Secretary of State, the Secretary of Health and Human Services, and the Attorney General shall designate Federal employees and may, from time to time, designate private citizens to serve on an interagency coordinating group to monitor the operation of the Convention and to provide advice

on its implementation to the United States Central Authority and other Federal agencies. This group shall meet from time to time at the request of the United States Central Authority. The agency in which the United States Central Authority is located is authorized to reimburse such private citizens for travel and other expenses incurred in participating at meetings of the interagency coordinating group at rates not to exceed those authorized under subchapter 1 of chapter 57 of title 5, United States Code, for employees of agencies.

SEC. 11. AGREEMENT FOR USE OF PARENT LOCATOR SERVICE IN DETERMINING WHEREABOUTS OF PARENT OR CHILD.

Section 463 of the Social Security Act (42 U,S.C. 663) is amended-

(1) by striking "under this section" in subsection (b) and inserting "under subsection (a)";

(2) by striking "under this section" where it first appears in subsection (c) and inserting "under subsection (a), (b), or (e)"; and

(3) by adding at the end the following new subsection:

"(e) The Secretary shall enter,into an agreement with the Central Authority designated by the President in accordance with section 7 of the International Child Abduction Remedies Act, under which the services of the Parent Locator Service established under section 453 shall be made available to such Central Authority upon its request for the purpose of locating any parent or child on behalf of an applicant to such Central Authority within the meaning of section 3(1) of that Act. The Parent Locator Service shall charge no fees for services requested pursuant to this subsection.".

SEC. 12. AUTHORIZATION OF APPROPRIATIONS. [42 USC 11610]

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of the Convention and this Act.

Approved April 29, 1988.

LEGISLATIVE HISTORY-H.R. 3971:

HOUSE REPORTS: No. 100-525 (Comet. on the Judiciary).
CONGRESSIONAL RECORD, Vol, 134 (1988):
Mar. 28, considered and passed House.
Apr, 12, considered and passed Senate, amended.
Apr. 25, House concurred in Senate amendment.

APPENDIX 'K'

Petitioners's Primary Hague Brief
***Excluded* by Both**
District and Circuit Courts

Professor R. Kanth
Social Sciences
One Campus Road
Wagner College
Staten Island, NY 10301
Tel:718-390-3265

US DISTRICT COURT CENTRAL DIVISION DISTRICT OF UTAH

RAJANI KANTH	**PETITIONER'S REPLY TO**
Petitioner	**RESPONDENT'S**
v.	**MEMORANDUM**
CORY KANTH	
Respondent	**CASE# 2:99 CV 532 C**
	Judge
Tena Campbell	

Preamble:

I:

1.0 Petitioner is attempting to defend the rights of two minor children rudely, and wrongfully, abducted from their *habitual residence* in Australia where they had lived since June of 97 through March 25th of 99, {with a break from April to July of 98) when Respondent, who suffers from fits of dementia, vanished with them *(Exhibit: I)* albeit on the basis of a carefully constructed plot spearheaded by her parents.

1.1 Only a part of the Hague Case Law that supports the Petitioner is already cited in the original Petition prepared by his previous counsel ; Petitioner will be adding far more evidence, in that vein, while also explaining the details of his Case with respect to the Facts therein, and the Rules and Stated

Intent of the Hague Convention for the Return of Abducted Children.

1.2 *Court will note that Petitioner's application has the support of the Commonwealth of Australia - which forwarded his Petition to the US Central Authority (which asked Respondent to voluntarily return the children: Exhibit: 2) - whose Supreme Court (of New South Wales) has provided us with an Affidavit (Exhibit:3) pointing to the clear and unambiguous violation of his Custodial Rights, under Australian Family Law, rights that have been systematically denied since the abduction on March 25`th, 99 (with the securance by Respondent of an ex parte "protective order" upon arrival in the US) from Sydney, Australia.*

1.3 *With all due respect to the high authority of the Court, given the undeniable facts of the Abduction, the irrefutable history of family residence in Australia for some 18 months, and the solemn Affidavit submitted by the Commonwealth of Australia in support of his Petition -to which by law full faith and credit need be shown - it is Court's obligation under International Law [Article 12 of the Hague Convention] to which the US is a signatory, to order the immediate return of the children to Australia.*

This much is warranted by the Convention and the enabling US Federal Law covering such matters; anything less would send a signal to the world which will monitor and record this Hague case carefully, that *kidnapping and transporting minor children is become the optimal modern-day means to a leveraged divorce and custody suit to follow,* much like kidnapping of young women was the primitive means to marriage in many tribal societies in Africa.

Given that Respondent wilfully, if implicitly, admits to all material facts already submitted by Petitioner in his original Petition as stated in her *Respondent's Memorandum* (page 1) dated the 18th' of August:, the task becomes almost a matter of

summary judgement; to quote:

> *The only element contested by Mrs. Kanth is Mr. Kanth 's assertion that the return of the children from Australia to the United States on March 25, 1999 was wrongful.*

II. Standards of Proof in the Convention

2.0 The Petitioner in this Hague Case is held to a much lower standard of proof by the Hague protocols than the Respondent, charged with only a *preponderance of evidence,* that does not require to be authenticated, to demonstrate that the *Removal* was *Wrongful* under the Convention.

The Respondent, on the other hand, is required to submit a defense that must rise to the level of *Clear and Convincing* evidence, on very narrowly and very conservatively specified grounds,. with respect to Articles 13b and 20; (albeit with *a Preponderance of Evidence* with regard to the exceptions in Articles 12 and 13.).

This differential apportionment of burdens of proof reflects the explicit intent of the Convention which is weighted toward the Duty to Return abductees to their habitual residence.

2.1 To sum up: the Defense *against* the Petition must show:

a) *by clear and convincing evidence that there is a grave risk to the child upon return. Convention, Art 13b; 42 U.S. C. 11603 (e) (2) (A)*

b) *by clear and convincing evidence that the return of the child would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms .Convention, Art. 20; 42 U.S.C. 11603 (e) (2) (A)*

c) *by a preponderance of evidence that the proceeding was commenced more than a year after the abduction. Convention,*

Art. 12; 42 U.S. C. 11603 (e) (2) (B)

d) *by a preponderance of evidence that the Petitioner was not actually exercising the custody right at the time of removal or had consented and acquiesced to the removal and retention. Convention Art. 13 a; 42 U.S.C. 11603 (e) (2) (B)*

Court will note, as ruled in ***Friedrich II,*** 78 F.3d at 1067, that *all four* of these exceptions are *`narrow"* and, moreover, as stated by Judge Russell of the US District Court in ***Smith vs Smith*** (Ken.W.Dist.1997, #1:97-CV-7s(R):

Federal courts have the ability to return a child ...even if one of the exceptions applies.

Now Items c and d can be ruled out of court by a simple and direct reference to the facts (*as per Exhibits 2 and 3 already cited*). Petitioner will endeavour to show, additionally, that items a and b neither exist as hypothesized, and/or do not meet the high standard of proof required.
It is worth noting, again, the *logos* of the Convention, as iterated in the comments of Judge Rand of the Family Court in NY in ***Dickbauer v Dickbauer*** (9 Fam.CT. NY 1996, No.V-11789/95):

The US Court of Appeals, Third Circuit, has held that the "Convention's approach to the phenomenon of international child abduction is straightforward. It is designed to restore the factual status quo which is unilaterally altered when a parent abducts a child and aims to protect the legal custody right of the non abducting parent. FNI Pub.Notice 957, SI Fed/.Reg.10494, 10505 (1986). ***Thus the cornerstone of the convention is the mandated return of the child to his or her circumstances prior to the abduction...***

III. Wrongful Removal

a. *A Removal is Wrongful under Article 3 of the Convention if it is in breach of Petitioner's Custody Rights. as delineated in Article 3a. As the Supreme Court of NSW, supporting the Commonwealth of Australia 's support for the Petition., makes radically clear, the Respondent's action was in breach of such rights at the time of abduction when the family lived together as a resident family in Sydney, Australia.*

. *This also comports wish Article 15 of the Convention that, where feasible, seeks and/or places reliance on such a determination by a foreign government.*

c. *As per the import of Article 4 of the Convention, Petitioner's children were Habitually Resident in Australia, a Contracting State within the Convention, since June of 97, (family resident visas remain valid through the year 2001) before the breach occurred, and his job offer from Australia is irrefutable proof of Settled Purpose and Intention. (See* ***Walton vs Walton*** *as will be cited later, and Exhibit 7 of Affidavits dossier).*

. *At the time of their Removal, as per the statement of the Supreme Court of NSW. Petitioner was duly exercising custody rights as per the meaning of Article 3b of the Convention.*

e. *The Respondent kidnapped, i.e. Wrongfully Removed his children, without his knowledge and/or consent, from Australia and has retained them in the USA since March 25'h in violation of Article 3 of the Convention.*

f *And Petitioner filed his Hague complaint on May 14`h in Sydney, and on July 8th in Salt Lake City, in timely fashion, well within the one year term allowed by the Convention under Article 12.*

IV. Authorised Defenses Under the Convention

4.0.1 The only, and highly exceptional, defenses against a Petition for Return authorised by the Hague Convention are:

v. Article 13a: which would apply if had Petitioner NOT been exercising custody rights

ii Article 13b: if there were grave risk of physical or, psychological harm to the children upon return.

iii Article 13: if a mature child objects

iv Article 20: if the country to be returned to is in serious violation of human rights

v Articles 12&13: if Petitioner did NOT have custody rights; and children were NOT removed from the country of Habitual Residence.

Clearly and obviously, as will be demonstrated, NONE of these arguments are germane to this case, since:

a Petitioner was exercising full custodial rights and Sydney was home to the Kanth family since June of 1997 satisfying the import of any reasonable standard of Habitual Residence.

b The children are minors, not mature being under the age of sixteen.

c Australia is NOT in violation of human rights, and, despite all the constructions offered by the Respondent to claim, inappropriately as will be shown, 'grave risk' to the children, Petitioner's supporting Affidavits will make clear that this is a post factum fantasy. Indeed the shoe needs be on the other foot: it is the Respondent who has always posed a risk both to herself, and to her family, given her chronic history of instability and dementia which place children under her sole care always at risk

(see detailed reference to these matters in Exhibit 4 which is part of Petitioner's earlier Petition to Set Aside)

d *Aside from Affidavits brought forward by Respondent's own family and family friends - which should be radically discounted, since they were the co conspirators in the very Removal that is in litigation here, there is no evidence or proof in the slightest that the children were not happy and contented children; indeed, the contrary: as per the various affidavits (See Letters in Exhibit 8 In Exhibits Dossier attached) from senior professors and students, who visited us on a frequent basis in Sydney who were at least, at the very minimum, as responsible as Respondent's family, and ten thousand miles closer to the scene,*

e. *indeed, all charges proffered by the Respondent, even if gospel truth, that speak of a putative `threat' to the Respondent* ***area simply irrelevant to a Hague dispute.*** *Grave Risk, also used by the Respondent, is an Argument in relation to the children; not to the Respondent. As* ***Friedrich vs Friedrich*** *makes clear,* ***the focus is on the child not the parents.*** *At any rate, notwithstanding the contrived nature of these charges it should be apparent to Court that all such matters of division within the family, even if true, instead of being a predictable ploy to legitimise an abduction, could have been and can be dealt within a suitable Family Court action in Australia of which we are all residents.*

f. The central issue the Hague deals with is Jurisdiction. ***A Hague hearing does not address the `best interest' of the child;*** to cite Lord Justice Nourse, quoted by Justice Balcombe in ***Evans v Evans*** (AD 1716 Of 1988, (1989) 1 FLR 135)

> *The judicial... authorities in the country to or in which the child is wrongfully removed or retained cannot refuse to order the return of the child, whether on grounds of choice of forum or on a consideration of what is in the best*

interest of the child or otherwise.

g. *The interests of the child are for a Family Court to decide at the time of a custody debate within the relevant jurisdiction.. It is not the mandate of a Federal Court to be settling custody issues, specially on the heels of an abduction. That would defeat the very purpose of the Convention.*

V. Affidavit Support

5.0 Under 42.USC 11605 no authentication is required for supportive documentation, nor can a Hague Petitioner, in the nature of the case, be required to bring in witnesses, or even legal documents (other than the original application forwarded by the Central Authority), from the country of the Wrongful Removal. A Hague Hearing. leans toward a substantive examination of the facts of the individual case with the burden of proof upon the Respondent. .However, Petitioner has tried to obtain notarised affidavits from Australia, wherever possible, with some previously filed letters are now resubmitted as notarised documents.

5.1 At any rate, Petitioner's various Affidavits establish the following points:

a) *that the Kanth family were a settled, contented family who lived in Sydney much as families live anywhere: they entertained, they had parties for children, the children were engaged in numerous activities as appropriate for their ages,and both parents were wholeheartedly engaged in child rearing and nurturing activities.* ***Indeed the unique aspect of this family is the extent to which their father was also involved in day-to-day primary caretaking functions given:***

1. *The confessed disabilities of the Respondent. (See Exhibit 5)*
2. *The ample time Petitioner devoted to nurturing (See references in*

various Exhibits)

b) *that, in particular, his school going older child had flourished in her new environ faring brilliantly in preschool, in grade school, and in a full pallet of extracurricular activities, inclusive of, and not restricted to, drama school, gymnastics, piano and ballet (Exhibits 6: this is a dossier of various letters). Indeed, the older child had lived the significant third of her young life in Australia (even opening a bank account in her name: Exhibit 6) while the younger daughter had spent two thirds of her entire terrestrial existence there. The children, much as the family enjoyed the general ease and relaxed pace of Australia much as its beaches, zoos parks, and botanical gardens that are justly famous.c) that Petitioner's position in Sydney was, as is usual in Australian academe, a reasonably permanent one subject to a 3 year probationary period (far shorter than the 7 year tenure period in the USA). It also shows that, as a family, all the Kanths had Resident Visas lasting through 2001 (Exhibits submitted in Original Petition)*

d) *That Petitioner and Respondent went there, based on the foregoing points, as a family with settled intentions having come through much job insecurity and privation: indeed Australia was a boon and a godsend given their previous history of penury and privation.*

e) *That an, academic career, unlike others, is one of constant motion until tenure is finally assured. As such, Australia offered the Petitioner the first tenured position he had had ;. The Kanth family had subsisted on foodstamps in Utah, so it was the offer of stability and sustenance that moved both litigants to go to Australia. They had given up habitual indigence to take up a secure and bountiful opportunity in Australia which promised to be renewable beyond the 3 year contract in question (Exhibit 7)*

f) *That Petitioner is a person of unimpeachable moral character*

*with strong family affections and ties unworthy of any and all charge of misconduct brought against him by a Respondent anxious to protect and secure her illegal abduction (See abundant references in affidavits constituting a small dossier of letters of Visitors to our home in Australia, and peer testimony from across the globe: Exhibits 8 & 9)..Court will note that not one such complaint had ever surfaced anytime during the marriage - indeed throughout the many years that both litigants spent in Utah where with the benefit of her loyal family Respondent could easily have brought and pressed charges locally any number of times - .**until abduction day and after.***
Court needs to examine closely letters and cards written by Respondent right up to the very last day in Australia swearing her everlasting love and respect for the man she had planned to betray (Exhibit 10)g) That the Commonwealth of Australia, by Affidavit and by forwarding Petition to the US Central Authority, supports Petitioner's charge of Wrongful Removal. (Exhibit cited previously)

VI Settled Intent

6.0 The. Hague Convention is not about Custody or Divorce but *Jurisdiction.*

a. *The Kanth family lived on Resident Visas as residents of Australia until the Wrongful Removal. In March Of 99. Their Family Visas are still valid and will remain so until renewed in the year 2001.*

b. *They lived (with a short break in between) from June 1997 through March 1999 in Australia. Had the abduction not taken place, they would have stayed on in Australia at least until July 2001.*

c. *A highly important caveat: while the ordinary and, therefore, habitual residence of the Kanth family was Sydney since July of 97, the settled intent and purpose, on their second visit to*

Sydney in July of 98 , with a 3 year academic contract (where an academic year uses up the best part of 2 calendar years) in their pockets is simply incontrovertible.

D. *Even were it to be argued that their return to the US in April of 98, despite leaving all their domestic furnishings behind in Sydney (see, and despite the fact of having signed the 3 year-contract prior to leaving for the holiday in the United States, `unsettles' their original intent for going to Australia, their return to Sydney, in July of 98, on the basis of a solid job offer, nullifies any presumption of `unsettled' intent quite thoroughly and, more to the point, dispositively.*

VII. Revealed Intent of Respondent

7.1 Habitual residence has, however has less to do with length of time, and more with *intentionality*. Intentions are best demonstrated in practice, what economists call *revealed preference* (i.e. Respondent, for all her denials now, after the fact of an actionable abduction, revealed her intent to go to Australia by going there, not once but twice and staying there for 18 months). In this section, Petitioner offers an important sketch of these motivational factors:

a. *the Respondent accompanied Petitioner to Australia not once but twice ; given that each time, the departure was from her parent's home - indeed the Kanths did not have a home in Utah after 1996- warmly seen off at the airport by both her parents, it is truly hard to believe that any coercion could ever have been involved.*

b *Respondent spent* ***a total of 18 months*** *in Australia without revealing her newly discovered postfactum distaste either for her husband or for Australia to anyone out of the dozens whom they interacted with on a daily basis in Sydney who mere all stunned and flabbergasted by her sudden disappearance.*

c *Court will note that Respondent might have left at any point in*

those 18 months had she chosen to, but she did not. ***The bizarre notion of passports being concealed belies the ease with which Respondent disappeared with the children when she chose to.*** *Respondent always had access to all documents and all family funds, since she did the billing, the shopping and the taxes, carrying a joint credit card in her name.*

. *She might have dissolved the marriage right there in Sydney at any point or asked for a separation but she did not.*

e. *She might have sought marital therapy in Sydney if she were experiencing marital discord, but she did not. Indeed therapy, of a different order, was suggested to her several times not in relation to marital discord but her uncontrollable temper in relation to the children.*

f *Her sudden, dramatic, and wholly irrational, modus of departure therefore can only be surmised as a paradigm shy significantly indicative of a deeply disturbed and troubled mind and disposition.*

VIII.

The Rationale for Removal: Vignettes of an Abduction

8.0 Although this section is not wholly relevant to the Hague Petition, since motives for the abduction, and the character of the Respondent, are immaterial to the key matter of **jurisdiction** that the Convention addresses, Petitioner wishes to place the abduction in perspective for the sake of completeness of information available to the Court:: truth is, there were three major influences leading to Respondent's sudden exit:

a) *she witnessed a crime of severe brutality in Sydney which unhinged her chronically unstable psyche a week or so before her departure*

b) *her mother who has manipulated her disabilities all her life, and loathed this marriage and the Petitioner, took advantage of her state of mind to counsel running away. The "ethnic cleansing" hypothesis is documented (Exhibit 4 cited previously) and is a serious matter.*

c) *Respondent suffers from, as nearly as a non-specialist can detect, a hi functioning form of disorder, genetic in origin, which makes her prone to severe anxiety and delusion..*

8.1 *Stated simply, the abduction melodrama was orchestrated by remote control by Respondent's mother.*

8.2 *Evidence for this hypothesis of maternal control comes from Petitioner's experience last April when he arrived in SLC in wake of the wrongful removal. The Respondent told me that she would like to return, couldn't do so until Petitioner spoke to her parents, itself an important fact to consider given her self proclaimed immaturity. (Exhibit S cited already). Petitioner rushed over to find her father amenable to discussion, but not her mother who refused any and all contact. It was this very same lady who pretended not to know where Respondent was when Petitioner called from Australia having discovered the family missing. So fabrication comes as easily to the mother as to the daughter.*

8.3 In this context, Petitioner appends letters and cards (Exhibits cited already) written by the Respondent to the Petitioner that, *virtually to the last day of the Abduction* bearing eloquent witness to:

a) *the warmth and love of their relationship free of the subsequent fabrications of abuse*

b) *and more importantly, Respondent's se f confessed immaturity and inability to care for the children.*

These small tokens indicate a stable, loving marriage shattered only by

the occasional borderline instability of an emotionally disabled human being, a victim of radical substance abuse, toward whom Petitioner continues to harbor both deep affection and sympathy. Indeed her mother can confirm for Court that Petitioner had to call her in one day, while, living in Utah, because an inebriate Respondent had dropped their newborn baby and was throwing up all over the room. Petitioner married someone like that, had two children with her and hoped that care and consideration would effect a benign change of persona. Perhaps Petitioner erred in that regard

8.4. Petitioner is an academic who has authored and published multiple scholarly books, his work recognised by leading thinkers of our time including Linguist Noam Chomsky of MIT and Philosopher Roy Bhaskar of Oxford University (Exhibits 11) He has neither the temperament nor the will to abuse wives and children; in fact he was abused, his truest was betrayed, and his children whom he had cared for from birth were kidnapped, and as such both abused and cajoled.. Such were the leavings of unilateral love. He had lost one family owing to the hazards of tenure denial and financial rigors; and he patiently struggled to protect this new one regardless of costs.

IX. Settled Intent and Motivations of Litigants

9.0 At any rate, to return to the Argument, for his part, as backed up in evidentiary form by various *Affidavits from distinguished academics from around the world,* who knew Petitioner's career interests and plans (for being his referees), Australia offered Petitioner the possibility of tenured permanent employment, the dream, if one can call it that, of anyone and everyone who is in the academy, at a major world class university *(Exhibit 9: cited already and included in dossier of Affidavits).* A *settled purpose,* as far as the Petitioner goes, could not have been better defined. In this day and age few professions, other than academe, offer the probability of secure, virtually lifetime employment: and he had been granted

precisely that.

9.1 In point of fact, though, the *settled intention* in moving to Australia was prompted by even more serious considerations. As children from a bi-cultural family it was important to both parents that children were raised in a cosmopolitan, multi-cultural environment, something that both litigants agreed was implausible in Utah (in fact, Petitioner had previously rejected an offer from a school in multiethnic New York, but only for its public safety record). Sydney fit that bill almost perfectly. Respondent claimed to be in total rapport with Petitioner when litigants left for Sydney.

As an aside, this anecdote: on going to pick up his daughter from her school, in the heart of Sydney one day it took Petitioner a good two minutes to recognise her, within a group of barely 20 kids, amidst about half a dozen close look-alikes! That day he knew they had made the right choice for their children. Stated baldly, litigants left for Australia to escape the scarring tarnish of prejudice based upon `difference'. Having reviewed the experience of two daughters from an earlier marriage who were raised here, Petitioner can confidently say, that, though Utah has various valuable agrarian virtues well worth respecting, multiculturalism is not its strong suit.

9.2 To sum up: the Respondent came willingly, indeed prodding Petitioner in that direction, to Australia and then left of a sudden in a fit of dementia. Her sins, such as they are, must not be allowed to be visited upon Petitioner's children.

X. Habitual Residence and Settled Intent

10.0 The most important phrase in the Hague protocols is *`habitual residence'*. As a matter of deliberate policy, to the discomfiture of more legally minded judicial functionaries, no standardised definition of the phrase has ever been included in

the Hague Convention. It was intended as a simple, non-technical statutory concept.

10.1 The Eleventh Edition of Dicey and Morris on the Conflict of Laws has this to say on the subject:

> *It is greatly to be hoped that the courts will resist the temptation to develop detailed and restrictive rules as to habitual residence ...the facts and circumstances of each case should continue to be assessed without resort to presumptions and presuppositions.*

In effect, to quote a famous opinion, that of Lord Scarman, ***IN R vs Barnet,*** UK, 1983:

> *there must be a degree of settled purpose ...the purpose may be one or they may be several. That is not to say that the propositus intends to stay where he is indefinitely. Indeed his purpose while settled may be for a limited period. Education, business, or profession, employment, health, family, or merely love of the place spring to mind as common reasons for a choice of regular abode... all that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.*

As Justice Waite goes on to say, in the famous ***Bates*** Case in the UK (1989) that is routinely consulted for this matter of residence, *in effect there is no real distinction between ordinary residence and habitual residence.* Indeed *ordinary* would be the best synonym for *habitual* under the Convention..

10.2 Expert jurist opinion much as actual judicial decisions on *Habitual Residence* that are cited routinely suggest the following:

a) a stay of even *one day* qualifies as habitual residence given a settled purpose and *acclimitisation* of the child (Ruling by Judge Scheindlin in **Brooke vs.Willis,** S.D.N.Y.1995;907 F.Supp1.57).

In Judge Scheindlin's words:

> *Place of habitual residence is determined more by a state of being than by any specified period of time; technically habitual residence can be established after only one day as long as there is some evidence that the child has become "settled" in the location in question.*

b. ***In Re Bates,*** a stay of but *three months* in a rented apartment in New York was enough to establish *habitual residence*. To quote the approving remarks of Judge Paez of the US District Court of the Central District of California, in ***Mozes vs Mozes:***

> *Bates involved a two and a half year old child who had been removed from her mother's apartment in New York and taken by the nanny to the father's home in Englands, with the father's knowledge an approval. Although the child and her parents had lived most of their lives in England, and had only recently rented an apartment in New York where they were to stay three months, the Bates court held that the child's habitual residence was in the US because her care, accomodation, and therapy treatment in New York during the period of three months [or so] that would elapse before the father's return to London "amounted to a purpose with a sufficient degree o. f continuity to enable it properly to be described as settled. "(**Bates,** No. CA.122.89 at 10]*

b. In ***Bennet vs S, Australia,*** 1993 the Judgement endorses a period of under 6 months as enough to define Habitual Residence concurring with Lord Brandon in ***C vs S*** 1990, 2 FLR 442 House of Lords that:

> *A period of under 6 months was determined to be sufficient to establish habitual residence for the purposes of the Convention*

c. Or as Lord Scarman puts it in ***R vs Barnet,*** *Settled Purpose,* once given, obviates duration which can be short or long;

> *Indeed his purpose while settled may be for a limited period.*

d) Indeed, even temporary absences from the resident country do *not* confute the issue of residency:

To cite Dr.Clive, in his Authoritative essay on the subject in the *Juridical Review*, 1997, Part 3, p 137:

> *Existing habitual residence is not lost by the mere fact of leaving the country for a temporary absence which is intended to be of short duration - for example, for a* relatively short holiday.

Finally, and importantly, *habitual residence* is *not the same* as permanent residence. In *Shalit vs Shalit,* the judgement of the court concurred with the following statement: .

> *It does not matter that the United States was not intended to be the children's Permanent residence, nor that it was intended when they came here that they were to return to Israel in 2000. What may happen in the future ordinarily has little, if any, relevance to whether the children have become so `settled' in their place of residence that it may fairly be described, in the present but by reference to the past, as their 'habitual' residence.*

All these comments support the Petitioner's case *and establish the fact that Habitual Residence, a finding of fact rather than a legal construct,* mainly reflects a *`degree of settled purpose';* thereby, all that is needed as proof of the Kanth family's habitual residency in Australia is : a) residency there, and b) a degree of

acclimitisation of the older child (the younger one was but a baby in all this time) in her environs. As such:
Given that Petitioner had accepted initially a six-month renewable contract, and later a 3 year professional academic contract, after a spell on foodstamps in Utah, and a year's visiting professorship in Denmark, and given that Petitioner's elder daughter arrived when 4 and left when 6, while the baby arrived while only 1 and left when 3, not to mention the older daughter's sparkling successes in grade school, after graduating from preschool also in Sydney, as certified by her school principal, and her various other extracurricular activities inclusive of swimming and drama school, music school, ballet school, and gymnastics, (not all, but most, of which are provided in' the affidavits) , the family's stay in Australia from June of 97 to the abduction in March of 99 fits handsomely within the parameters of current expert judicial opinion.

Petitioner's daughter's little life was as complete as it could be anywhere : stated simply there was that `sufficient degree of continuity' cut short only by the guillotine of abduction. (it is a measure of the faith vested in the Respondent's Memorandum opposing the Petition that the complaint is offered therein that the older child had had only ONE ballet lesson; true enough, because she was kidnapped prior to the second!!)

Restated, the litigants had gone to Australia,. *conjoined in purpose:*

1. *to seize advantage of the only (renewable) long term job offer in 4 years*
2. *to seize advantage, of the multi cultural nature of Sydney which, given our bi-cultural family, was a major lure.*

a. *Visit number one (commencing in 97) was on a 6 month contract with the promise of renewal. There was obvious settled intent and purpose on this transfer of residence: the hope was*

that a visiting professorship would turn into a permanent job offer. The renewal did take place, but was trumped by a superior 3 year `tenuretrack' offer from the University of Technology more or less in the same time frame

b. *An assault suffered by Respondent, in Sydney, who refused therapy (Exhibit 12.-See Affidavit from Psychologist Hogan in Sydney; also letter from Professor Chris Terry confirming this), prompted Petitioner to suggest a vacation until taking up the new job offer. So, the Kanth family came to the US in April , with the confidence of the Sydney job offer that they had accepted and pocketed,, fully geared to emotional recovery on the part of the Respondent and relief from collateral anxiety on the part of the Petitioner.*

c. *The return to Sydney (July 98) was far more pleasurable for going without care into a known rather than unknown context with a plum (tenure track) position in a major university with income stability guaranteed (there was even a pension plan.- Exhibit 13) and with a child looking forward eagerly to a school that she had settled into prior to our departure for the US. The Settled Intent here is simply indisputable. The Kanth family was settling into Australian ways, Petitioner's daughter spent 9 straight months in an advanced section for gifted children , in the first grade in Randwick School, excelling in all school and extracurricular activities (See Exhibits cited), and revelling in her mastery of the Australian accent!, before being yanked out of class and stashed on a plane. and told that her father was planning to kill her and the entire family. Unmistakeably, Sydney was the child's, and the family's, ordinary or habitual residence.*

XI Errors and Elisions in Respondent's Defense

11.0 To address now the burden of the objections of the *Respondent's Defense, inclusive of arguments offered by Counsel for*

Respondent at the October 18 Hearing on Petitioner's Motion to Set Aside, In general, Respondent's defense has been barking up the wrong trees, ***posing strictly non-Hague issues for consideration****; as such, the innumerable affidavits of Respondent are only an exercise in superfluity given the track taken that simply does not comport with the jurisdictional parameters of the Convention* (as will be shown). Petitioner is not required to answer to non-Hague arguments, but is doing just that only for the sake of Completeness of this Reply.

11. 1 Defense have seized upon Petitioner's applications to foreign universities as proof that Australia was not the children's *habitual residence*. There is need to clarify two important points in that regard:

a) firstly, all academics tenured or not, test the market to canvas options for a variety of considerations including promotion, upgrade of grants, research facilities, etc (see Exhibits); also it is the normal way that one advertises one's academic wares at annual job markets. And occasionally one picks up bargaining chips to present to one's own institution.

b) More importantly, as only too often repeated, as per Friedrich vs Friedrich, the Hague convention demands that we look backwards not forwards in time; the settled intent is applicable as the sufficient rationale for our original migration to Australia in terms of the Hague requirement of habitual residence The litigants were there; Petitioner had accepted a permanent job there: their children grew up there and went to school there, and the Respondent abducted the children while the family lived there..Petitioner's future career development ideas, while living in Australia are immaterial to the Petition, as they would be were Petitioner to be living presently in Utah on a tenured slot and applying overseas for positions: an

application, or every a set of applications, does not change habitual residence-To cite the judgement in . the definitive Friedrich case:

> *Any future plans that Mrs Friedrich had for Thomas ... are irrelevant to our inquiry...habitual residence can be altered only by a change in geography and the passage of time, not by changes in parental affection and responsibility.*

Similarly, the verdict in **Benson vs Benson** (19 Oct 1998) reads:

> *..too rigorous demands cannot be made concerning the person's intentions for the future ...thus Habitual Residence need not be permanent residence*

c) In point of fact, given their tender ages, the children have lived most of their consciously sentient social lives in Australia rather than elsewhere. It was their ordinary residence from 1997 to 1999.

11.3 In similar vein, the Respondent has seized upon Petitioner's current presence in the US as grounds nullifying the Hague Petition (October 18`x, Court Record). Again this is a profound misconception:

a) Petitioner is here to finance and prosecute his Hague case unfundable on an Australian salary: he is on fixed term leave from his Australian university (Exhibit cited already; see also Exhibit from his New York host institution testifying to this,: Exhibit 14) , he still retains an Australian residence visa, and maintains an apartment in Sydney. (Exhibit 15) It would take him a year to acquire residency in New York. He does not rent an apartment, lives in the dorms, does not have a bank account, and does not own anything, not even a phone in his own name in the US. He is exactly what he purports to be: an Australian resident here in the US on a temporary assignment so as to pursue his Hague Case effectively.

b) More importantly, as the dispositively authoritative Elisa Perez- Vera Report, one of the most cited documents in the Hague literature, makes abundantly clear in. Article 110, (see Exhibit 16) the residence of the Petitioner after filing is immaterial: indeed the presumption is ***that the abductees need to be returned to the Petitioner*** wherever he/she may be located subsequent to filing.

c) Finally, as ***Friedrich vs Friedrich*** makes clear ***it is past experience*** (i.e. of the children) ***rather than future intention*** (of the parents) that governs the notion of habitual residence. As Judge Paez, op.cit., puts it citing Friedrich:

> *To determine habitual residence the court must focus on the child, not the Parents and examine past experience, not future intentions*

Once the Kanth children had lived in Australia, through a good part of 3 calendar years, it does not matter subsequently whether/what their parents may /or may not have intended either for themselves or for their children. Suffice it to say that the children were well acclimatised to their Australian environs as they had to be given that broad chunk of time.

XII Grave Risk The Last Resort Defense

12.0 Realizing the weakness of arguing against the fact of the children's habitual residence in Australia, the Respondent rests the principal burden of her defense on the Grave Risk Defense: the one defense that is the most rarely allowed in Hague Cases, and where clear and convincing evidence must be shown to exist for such a defense to be _ sustained (even after which, as will be shown, Court still retains the discretion to return the child; see comments by A.E.Anton in a following quote). In the words of the Authoritative *Perez Vera Report, the definitive Reference to the Convention.*:

To conclude our consideration of the problems with which this paragraph deals, it would seem necessary to underline the fact that the three types of exception to the rule concerning the return of the child must be applied only so far as they go and no further. This implies above all that they are to be interpreted in a restrictive fashion if the Convention is not to become a dead letter. In fact, the Convention as a whole rests upon the unanimous rejection of this phenomenon of illegal child removals and upon the conviction that the best way to combat them at an international level is to refuse to grant them legal recognition-As a result, a systematic invocation of the said exceptions, substituting the forum chosen by the abductor for that of the child's residence, would lead to the collapse of the whole structure of the Convention by depriving it of the spirit of mutual confidence which is its inspiration. [Professor E.Prez-Vera, Hague Conference on Private International Law, Actes et documents de la Quatorzieme session, Y61.111, 1980, p. 426]

To reiterate:: a Hague Hearing is NOT the forum of determination of the `best interest' of the child. As the State Department Text and Analyses has it, on the invocation of Article 13b:

> This provision was not intended to be used by defendants as a vehicle to litigate [or relitigate] the child's best interests.

Finally, in the words of Mr. A. E.Anton, Chair of the Hague Convention:

> This is intended to be a narrow ground of refusal... this provision, therefore, would not by itself necessarily exclude a duty to return a child (International and

US Courts have taken the following positions, all unfavorable to the Respondent, on Article 13b pleadings, ruling against the exception as follows, in case after case:

A) **Brown vs Brown** (Fam.Ct.Autr.1982): ...
it is not merely a grave risk of 'any' physical or psychological harm ...the harm must be of a substantial or weighty kind.

B) **Collopy and Christodoulou** (Dist.Ct.Co, 1991)...
This provision was not intended to be used by defendants as a vehicle to litigate the child's best interests ...the person opposing the child's return must show that the risk to the child is grave, not merely serious...

C) Indeed, the US Federal Court of Appeals, 6th Circuit has held, in rapport with the intent of the Convention, that Art13b exceptions cannot be considered until one of two conditions are met:

> *First, there is a grave risk of harm when return of child puts the child in imminent danger prior to the resolution of the custody dispute..e.g., returning the child to a zone of war, famine or disease. Second there is a grave risk of harm in cases of serious abuse or neglect, when the court in the country of habitual residence may be incapable or unwilling to give the child adequate protection.*

Court will note that, granted the validity of the above, Respondent's Grave Risk pleadings are wholly out of order.

D) As Judge Garbolino of the Superior Court, Placer

County, Calif put it in Girdner &Hoff, ed. Ch.4, Selected Good Practices in International Family Abduction Cases:

> *There is a real danger for courts to exceed the scope and intent of the Convention when the defense amounts to a showing (only) of transient or reparable harm...*

This issue of transient or reparable harm is also addressed - unfavorably to the Respondent - in Slagenweit vs Slagenweit [841 F.Supp.264]. and a similar judgement was handed down in Renovales vs Roosa [1991 WL 204483, Conn. Sup. 1991]

In fact as a jurist comment on the one exception to this rule of rejecting specious Article 13b defenses, -in direct refutation of the Respondent's defense in this case - is Judge Garbolino's striking comment, made in context of Steffen vs. Severing [966 F Suppl. 922 (D.Ariz.1997)] that Respondent cites in her defense; in his words:

> *This case is troubling from the standpoint that where an abduction is carried out by a primary caretaker, the abductor may easily raise the issue of an interruption of bonding as a potential defense to return of the child. While an interruption in bonding can be a real and significant problem, its genesis is to be found in the actions of the abductor in removal of the child. On the other hand the abduction has prevented the left behind parent from an opportunity to bond,*

Indeed ***Steffen v Severing*** [966 F Supp1.922 (D.Ariz.1997)], is held up by Judge Garbolino , op. cit., as the case representing a "troubling departure" from the norm. In his comment on that

decision, he says:

> *Frankly it would appear that ` grave risk" defense should be based on better stuff. And he speaks also of a "danger in following the Steffen F case".*

Matters are stated even more succinctly in the judgment in FriedrichII (supra, 78 F.3d 1060, 1068), which again rejects the Respondent's argument forthwith:

> *A removing parent must not be allowed to abduct a child and then - when brought to courtcomplain that the child has grown used to the surroundings to which they were abducted [fn.9 - Under the logic of the Convention, it is the abduction that causes the pangs of subsequent return. The disruption of the usual sense of attachment that arises during most long stays in a single place with a single parent should not be a ` grave risk" of harm for the purposes of the Convention.].*

As Judge Garbolino, op. cit., admonishes:

> *Courts should also be wary not to deny the return of a child. where the courts or officials of the habitual residence have the ability to cope with the allegations of threatened harm, or can provide sufficient protections to obviate their effect upon the child.*

Grave Risk needs to be understood as being posed by the larger social environs of the home country not by the immediate environs of the child upon return. To cite the judgement in **Coffield** [Ohio.App.1 1 Dist. 1994, 644 N.E.2d 662]:

(this) language supports the conclusion that this exception is applicable only when the general environment of the home country poses a risk, not the specific environment on which the child will live.

As such, the psychological, or lifestyle, aspects of either parent were ruled irrelevant to an Article 13b defense, in Coffield, in tune with the intent of the Convention.

Three comments are necessary here with respect to Petitioner's case:

1.Petitioner was as much a primary caretaker as the Respondent; as such, the children's bonding was always dual, with both parents.
2. Since April 99 , Respondent has insured through brainwashing and refusal of contact with the children a sort of a deliberately contrived **debonding.**
3. The only risk to the children comes, **before, during and after the abduction,** from the chronic irresponsibility of the Respondent. In fact, the very act of abduction is itself now recognised as a form of child abuse.

Given all this, Respondent's defense, on this matter, doesn't have a leg to stand on.

Stated simply, there is not one shred of evidence that exists that can be brought forward until after the abduction, when suddenly various members of the Meyer family - who engineered the abduction - and their loyally obliging friends/neighbors in a closely knit community, form an `Indian' circle and take out affidavits to suggest that the Petitioner is a monster. Yet, even there they cannot demonstrate any risk to

the children, aside from suggesting a threat to the mother, from either Australia or the Petitioner.

On the matter of a `threat' to the Respondent - which is NOT a Hague issue [As Mr, Anton, op.cit., writes: "Apart from harm to the child, it has to be established that the Child itself, and not the abductor, would be placed in an intolerable situation "],- suffice it to say: Australia has an ample body of enlightened Family Law that protects Respondent, as would be the case in the US.

As Judge Garbolino , op. cit., sums up succinctly: .

> ...courts should be content to trust to the wisdom and experience of the courts of habitual residence to deal with the issue of the "best interests " of the child in relation to the bonding issues raised by the removing parent..

On Australia's Family Law protections, specifically, here is Justice Ewbank rejecting such defenses, in **Evans vs. Evans** [AD 1716 of 1988, 1989 IM 135J:

> Australia is a common law country and the Courts have ample powers to protect children ...the father can either take proceedings of his own accord... or he can alert the appropriate local authority in Australia and the Australian court can make whatever order is required, if any, to protect the children.

Further, As Justice Lincoln observes in **Evans vs Evan** [op.cit.J:

> In my judgement, there is a very heavy burden indeed upon a person alleged to have abducted a child in bringing himself or herself within the provisions of Article 13, and the Court should hesitate very long before it grants what is in effect an exemption from the urgency which is a characteristic of the Convention and the Act

incorporating it.

12.1 To claim that the children's unbonding with their mother is the `risk' [an idea emphatically rejected also in **Rydder vs. Rydder**: 8h Circ.1995, 49 F. 3d 369] is only to redefine for the benefit of the Court, the inherent thoughtless cruelty of the kidnapping that now, after the fact, exposes Petitioner's benighted children to such a risk; what the Respondent stands accused of can hardly, in itself, be turned into a defense without turning this into an Alice in Wonderland fantasy..One doesn't deliberately put children at risk and then claim that as a defense of the original action. On this see the judgment in Navarro vs Bullock [15FLR 1576 BNA Cal. Super. Ct. 1989] where the Court rejected such a defense, noting:

> *To retain the children in the United States guarantees that the mother will continue to frustrate the custodial and visitation rights of the father...To allow this to happen would be to allow mother to profit from her own wrong.*

Stated simply, in a civil society, kidnapping is indefensible and such removals are wrongful: both legally and morally.

12.2 Defense, in tune with the Grave Risk strategy seek to invite a psychologist to testify on behalf of the children. The irrelevance of such strategies, given the foregoing, should be clear, but they are also chided in Case Law. In **Tahan vs. Duquette** (App.1992, 259 N.J.Super. 328 [613 A.2d 486] the Court held that proposed testimony of such kind was ***irrelevant*** to the determination under Article 13(b).

> *We agree with the trial judge that the Article 13b inquiry was not intended to deal with issues or factual questions which are appropriate for consideration in a plenary*

custody proceeding. Psychological profiles, detailed evaluations of parental fitness, evidence concerning lifestyles and the nature and quality of relationships all bear upon the ultimate issue. The Convention reserves these considerations to the appropriate tribunal in the place of habitual residence. [Id at 333, 613 A.2d. at 489]

In the judgment offered in **Re Coffield** (Ohio App. 1 1 Dist 1994), Judges Ford, Christley and Nader quote the above passage approvingly arguing that:

In interpreting Article 13, the Courts in this country have expressly held that the scope of a trial court's inquiry under the grave risk exception is extremely narrow.

As Judge Garbolino caps it:

As with the other defenses under the Convention, even though a defense of grave risk is established, the court is still not required to deny the petition, and the court may exercise its discretion to order the child returned.

In **Escudero v. Tice -Menley** [58 F.3d 374 8th Circuit, 1995] allegations of similar risk to the child were rejected outright by Court. Once again, the entire programmatic thrust of the Hague Convention is to return a child to its habitual residence; judicial discretion needs to tilt in favor of that presumption against the weight of contrived defenses. As The Perez- Vera Report explains it, in Para 113:

In general it is appropriate to emphasize that the exceptions in the two articles do not apply automatically in that they do not invariably result in the child's retention ...the very nature of these exceptions gives judges a discretion - and

does not impose upon them a duty - to refuse to return a child

To cite Judge Garbolino again:

Even though some degree of psychological damage may be expected from a return of a child, the return of a child should not be denied...

In point of fact, even in the context of charges of severe forms of abuse, which is NOT the issue in this case, including sexual exploitation, Courts have still returned the child as per the Convention (See **Pacicca vs. Pacicca**, 042/260/93 Nelson, NZ and **Escudero v. Tice Meney** 58 F.3d 374 8`h Circ. 1995) which holds that local jurisdictions in country of habitual residence are more than competent to deal with such matters In sum, the Grave Risk Defense is simply inapplicable given the facts presented in Respondent's Memorandum who have profoundly misread the 13b defense; the issues raised are really matters pertaining to custodial, rather than jurisdictional (i.e. Hague) issues, and as such fall outside the scope of the present litigation. They belong not in this, but in the next forum, after the Hague issue is resolved.

XIII. Respondent's Case Law Citations

The Case Law cited by Defense mainly to DENY the family's Habitual Residence in
Australia is also quite counterproductive:
13.0 For starters, **Evans vs Evan Feder** which is cited by defense has only one
minor problem with it: **the decision was reversed upon appeal!; apparently the research by defense did not go far**

enough! Indeed this error is egregious enough to warrant dismissal of case for defense since a full five or so pages of the record are taken up by discussion of that case.
Here is the verdict of the US Court of Appeals, Third Circuit (3rd.Circ.1995:63 Fed. 3d 217) which **reversed** the original decision, who had this to say about the original judgment seized upon in undue haste by defense in this case:

> *In rejecting Australia, the court placed undue emphasis on the fact that the majority of Evan's years had been spent in the United states, ignoring the approximately six months that Evan lived in Australia immediately preceding his return to the United States ...moreover the court disregarded the present, shared intentions of both Mr and Mrs Feder with regard to Evan's stay in Australia focusing instead on Mrs Feder exclusively and on the facts which indicated that she did not wish to remain in Australia...*

Once again , highly significantly, the focus of the Hague is on the child not the parents.; and even six months was enough for the court to treat as constitutive of Habitual Residence even though Evan had lived the major part of his life in the United States.

13.1 So important was this reversal of judgement that now this case is held up as the archetypical case establishing ordinary residence as habitual residence. As Katherine Hung writes about the case (There's No Place Like Home: Determining Habitual Residence: Feder vs. Evans Feder, in 26 Ga. J.Int'l &Comp.L.487 (1987):

> **In Friedrich and Ryder** the courts interpreted **Re Bates** to mean that "there is no real distinction between ordinary residence and habitual residence". Based on this

interpretation, Evan's habitual residence at the time his mother took him back to the United States was his "ordinary residence" -the place he had been living for the previous six months. Without question, Evan's ordinary residence and thus his habitual residence was Australia. Therefore the District Court's finding that Evan's habitual residence was the US was clearly erroneous and the appellate court was correct in overruling the finding.

13.2 In the case of Petitioner's children, they easily satisfy the temporal requirement having lived, given their tender ages, over 75% of their socially aware time overseas, in Australia, between ages of 1-3 for the baby and 4-6 for the older child. Their ordinary residence was Australia between 1997-1999: From July 97 to April 97 in the first instance; and from July 98 to the time of Wrongful Removal in the second.

13.3 **The Ponath** case that is cited by defense is not applicable here because:

a) the parents in that case separated juridically in Germany prior to the removal of the child
b) the abducting mother was coercively held in Germany against her will.

In contrast, in the Petitioner's Case:

a. almost all Petitioner's Australian affidavits testify to a happy family; almost all in Australia were shocked when the Respondent vanished unannounced.
b, More importantly, letters and cards written by Respondent right up until the last day speak only of eternal love which is hardly indicative of a state of incarceration. (Exhibits cited already)

c. Respondent had interviewed with the Chair of the Department of Economics at the University of New South Wales and received a job offer in 98 which was to be renewed again in March of 99 (Exhibit 17).

d. There had been no family law complaint ever in the marriage, whether in Utah or Australia, let alone a legal separation.

e. Litigants had travelled to Australia twice, spending 18 months altogether, being seen off at the airport each time by Respondent's family, who could easily have applied restraint had coercion been ever implied.. Clearly the cleverly orchestrated abduction opera amply reveals Respondent's family had both the will and the means to help out had they been complained to by the Respondent in the 18 months prior to the removal.

This is hardly `clear and convincing' evidence of a coerced stay in Australia.!

13.4 To cap it, defense makes much of the fact that Petitioner's family vacations in the US were up to 3 months long which they claim is longer than usual vacations thereby hoping to seal the case for the US being the Habitual Residence. The error is understandable; few lawyers can be supposed to take 3 month vacations. On the other hand academics work on 9 month contracts and get summers off in their entirety. The error, though not condonable, is comprehensible.

XIV. Further Case Law Support for Petitioner

14.0 The Case that strongly supports the Petitioner is Walton vs. Walton (S.D.Miss.1996 925 F.Suppl. 453), presided over by Judge Russell, oddly enough involving Australia as well.In this case, the child was born in the US, and despite acknowledged

marital difficulties the family moved to Australia, with the child about 3 years of age, to Penrith , NSW, Australia, first ,where they lived 6 months , and then to Brisbane where they spent a year. The marriage worsened and both parties engaged lawyers and sought assistance of family court in Australia. The mother withdrew kids from school, applied for new passports and departed , unannounced, for the US. The child, similar to Petitioner's, had spent the last 18 months in Australia, and yet had been born and raised in the US. The Court under Judge Dan Russell, op. cit, went principally by settled purpose based
on the father's job offer from Australia, despite the following caveats:

> *1. charges of marital discord; complaints in family court, and retention of counsel while in Australia.*
>
> *2. fact of father's confiscation of passports (mother issued new passports)*
>
> *3 obvious degree of spousal coercion implicit in confiscation of passports.*
>
> *4. and even more importantly the father's explicitly expressed wishes to return to the US twice in his stay in Australia, even informing his employer on one occasion..*

None of these out of the ordinary parental actions deterred the Court in the case from seeing Australia as the Habitual Residence of the child. averring that ordinary residence.
is habitual residence regardless of parental intentions, accords or discords; after the fact of taking up new residence.

Judge Russell, in his judgment on the case, cites **Friedrich** with approval; I quote:

> *The rights and wrongs of the actions of the respective parents are not before us for disposition on the merits* (Friedrich at 1402).

In contrast to the case outlined above, in the Petitioner's Case, there has never been any legal complaint in this marriage, indeed Respondent testified to her undying love to the last; finally she left with the original passports surreptitiously signing off on Petitioner's checks in process. Obviously the alleged coercion was not very effective!

Walton vs Walton *is important because it lives up to the expectation of the Convention: and supports the Petitioner quite dispositively - once established in a hew environs, changes of hearts and minds (whether regarding the marriage itself, or employment, etc) with respect to future intentions of either parent is irrelevant to the case: it is the child's residence for the duration that the Hague focuses on.*

14.1 Other Case Law that similarly and strongly supports Petitioner is the classic **Re.Bates**, and **Feder II** cited already.

14.2 Also, more recently, **Mozes vs Mozes** (DC California 1998 19 F.Supp.2d 1108) where children born and brought up in Israel, who had lived but fifteen months in Los Angeles were seen as habitual residents in the US, which provides a close parallel to Petitioner's case and again gainsays the arguments of the Respondent. As Judge Paez put it: in his judgment in the case:

> *The purpose of the Convention is to preserve the status quo and to deter paren is from crossing international boundaries in search of a more sympathetic court... the Convention is designed to restore the factual status quo which is unilaterally altered when a parent abducts a child and aims to protect the legal custody rights of the non-abducting parent.*

Citing a similar ruling in **Falls vs Downie** (871. F.Supp. 100, 102 D.Mass. 1994) approvingly Judge Paes (op.cit) had this to say:

> *... although the two and a half year old child had been living in the United States for only eight months, the child's habitual residence was the United States.*

Matters are cut even finer when Judge Paes also cites **Re.S.** (A Minor. 1991, 2 F.L.R. 224) in his judgement, where to quote:

> *One English Court held that a child who was sent from Canada to stay with her father in Minnesota for a school year was habitually resident in Minnesota when removed by her mother after only four months.*

14.3 In **Shalit vs Shalit** (D.Alaska 1998. Case No. A98-328 CV (JWS), another case in point, the judgment of the Court, affirming the same principle, cites the Restatement (Third) of Foreign Relations Law approvingly that says:

> Habitual Residence should be interpreted in light of the policy of deterring child-snatching. In general, a child is considered to have acquired a habitual residence in a state by living therefor at least six months ....

Court will note, in context, that Petitioner's children lived in Australia - not merely resided there - for a full 18 months with a break in between. The situation clearly satisfies the requirements for habitual residence as outlined above. To cite Judge Paes again:

> *The fact chat a child is to remain indefinitely in a new forum may strengthen the argument ...yet it is not a necessary condition for establishing the habitual residence of a child*

As such, in conjoint force, mainstream judicial opinion, expert commentary, and actual case law, supports the Petitioner's

claim and disavows Respondent's defense quite conclusively. In sum::

a) *the Kanth family were ordinarily, legally, and in terms of immigration status, residents of Australia until March 25`h of 99 when the peace of the children's ordinary or habitual residence in Sydney was shattered by the abusive, and abhorrent, act of abduction*

b) *Pursuant to the Australian Family Law Act, Petitioner had full, though join rights of custody*

c) *As such, the Removal was Wrongful as per the Convention carrying the requirement of a Return of Children to the Petitioner.*

XV Conclusion

Article 11 requires that a decision be reached expeditiously; the children were abducted in March 25th the Hague Petition was filed in Australia on May 14`t', and in the US on July 8`h, and now it is November with the Hearing still some weeks away. As such, Petitioner respectfully prays that Court orders the immediate and unconditional return of Petitioner's children. There has been far too much suffering here on the part of the nonoffending members of this family, with grievous harm extant in the enforced severance of intimate bonding between father and children - if there has ever been any grave risk in this case it would fall within this domain - since the abduction. The children are entitled to their customary way of life; and their right to filial contact, and Petitioner needs to return to the challenge of his career destabilized by the trauma of abduction. Article 13 also makes a fleeting reference to the social background of the child as an occasional factor to consider, if

only under certain circumstances.. Given the process of ethnic cleansing that Petitioner's children have been submitted to (details in Exhibit already cited) since the abduction - being placed in a local Sunday school (where it is to be hoped the teachings include the 11th commandment: ***thou shalt not abduct thine own children!)*** with traces of their part Indian cultural heritage sytemically disparaged - lends even more urgency to restore them to their customary conditions of a literate, cosmopolitan, and humane existence.

Further, as per Article 26, Petitioner prays that all of his gratuitous, and horrific, legal expenses since March 25t' be borne by whomsoever has been paying Respondent's legal bills.

DATED this . . . . . day of November, 1999

Professor Rajani Kanth
Petitioner

Certified that a True Copy of this **Reply** has been mailed by first class mail to Counsel for Respondent on Nov.6th, 1999.

Professor R. Kanth

APPENDIX 'L'

Details of Job Offers From Australian University Indicating it's Permanency

School of Finance and Economics
Head of School
Chris Terry
PO Box 123
Broadway NSW 2007
Australia

Tel. +61 2 9514 7710
Fax +61 2 9514 7711
Email Chris.Terry@uts.edu.au
http://www.bus.edu.au

UTS
University of Technology, Sydney

4 November 1999

To whom it may concern -

Dr Rajani Kanth commenced a three-year renewable appointment with the School in July 1998. He was advised to apply for a permanent visa because this provided him and his family with access to the public medical-care system.

He subsequently advised me that the Immigration Department had issued him with a temporary visa due to a mistake.

Yours sincerely

Chris Terry

Witnessed by Peter Rosencrick

Justice of the Peace

4th November 1999.

School of Finance and Economics
Head of School
Chris Terry
PO Box 123
Broadway NSW 2007
Australia

Tel. +61 2 9514 7710
Fax +61 2 9514 7711
Email Chris.Terry@uts.edu.au
http://www.bus.edu.au

UTS
University of Technology, Sydney

4 November 1999

To whom it may concern

Dr Rajani Kanth applied for a three-year renewable position with the School in November 1997. Following several rounds of interviews the Deputy-Vice Chancellor of the University formally offered him the position on 19 February 1998.

Dr Kanth commenced duty at UTS in July 1998. He told me that he needed to take his wife (and family) back to the USA in the first half of 1998 to allow her to recover from the trauma of an assault that she had suffered while shopping in Kensington.

The School assisted the family to find temporary accommodation when they returned in July. Dr Kanth told me that he wanted to reside near the School his daughter has attended in 1997. Property values are high in this part of Sydney and renting for a period would be a logical form of initial accommodation.

Recently, the University decided to consider converting

contract positions into continuing positions and the School has recommended that six months prior to completing his contract Dr Kanth be considered for conversion to continuing. (At UTS, appointments are continuing rather than tenured.) Conversion is on the basis of satisfactory service and is determined by a committee established by the University.

Dr Kanth is currently on leave without pay. I recommended this leave on compassionate grounds, to allow him to return to the USA to resolve his family difficulties. My expectation is that he will return to his position at UTS.

Yours sincerely

Chris Terry

Witnessed by Peter Robertson

Justice of the Peace

4/11/99.

Office City campus, 645 Harris Street, Ultimo 2007
Campuses City, Kuring-gai, St Leonards

APPENDIX 'M'

Family Court of Australia
Application for Custody

FAMILY COURT OF AUSTRALIA

Application for

271878

Final orders

Form 7 – Family Law Rules Order 8 rule 3

(Not to be used for interim or procedural orders)

A	File Number	5-1533/99
B	Filed at / Filed on	
C	Place for directions hearing	97-99 Goulburn St. Sydney
	Hearing date / Hearing time	16-7-99 9:55 AM PM

Notice to the respondent(s)

If you oppose the orders sought in item 7 OR want the court to make a final order of your own you must

- ☐ file with the court a Response (Form7A), and
- ☐ serve a sealed copy of the Response on the applicant(s) at least 7 days before the directions hearing in Box C above, and
- ☐ attend the directions hearing.

A Details of parties

		Applicant 1	Respondent 1
1	Full name	KANTH RAJANI KANNEPALLI	KANTH CORY LEIGH
2	Date of birth	08.02.1949	08.09.1965
3	Citizenship, etc	Is present in Australia Is ordinarily resident in Australia	
4	Marital or parental status in these proceedings	Husband	Wife

B Addresses

5 (a)	Postal address for service of documents on applicant(s)	send to solicitor in 5(b)
(b)	Solicitor for applicant(s)	JANE HOBSON TURNER WHELAN Code: A74Q Suite 2, Level 2, 162 Goulburn Street, East Sydney NSW 2010 Tel: (02) 9261 3122 Fax: (02) 9261 1250 DX 211 SYDNEY
6	Postal address of respondent	2736 East 7305 South Salt Lake City Utah, USA 84121

DATE 9 JUNE 99 TIME 9:28 PM
BY 2736 E 7305 S
UPON
CONSTABLE RIVE, SALT LAKE COUNTY, UTAH

MIDIVARE 3000973

M1

BEST AVAIL

C Final orders sought by applicant(s)

7 State briefly but precisely what orders you seek	see annexure 7C

D Relationship details

8 Date cohabitation of applicant and respondent commenced (if applicable)	N/A
9 Date of marriage (if applicable)	.03.1992
10 Town/city and country of marriage (if applicable)	Salt Lake City Utah, United States of America
11 Date of final separation (if applicable)	25.03.1999
12 Date divorce became absolute (if applicable)	

BLE COPY

ANNEXURE "C" - Final orders sought by applicant(s)

1. That the children namely Malini Amatel Kanth born 1 April 1993 and Anjana Kesari Kanth born 20 February 1996 reside with the Applicant Father.

2. That the Respondent Mother have reasonable contact to the said children.

3. Such further or other Orders the Court deems fit.

4. The Respondent Mother pay the Applicant Father's costs of an incidental to this application.

M3

E Children

		child 1	child 2
13	Details of each child - full name	KANTH MALINI AMSTEL	KANTH ANJANA KESARI
	- date of birth	01.04.1993	20.02.1996
	- sex	Female	Female
	- full name of mother	KANTH CORY LEIGH	KANTH CORY LEIGH
	- full name of father	KANTH RAJANI KANNEPALLI	KANTH RAJANI KANNEPALLI

		child 3	child 4
	- full name		
	- date of birth		
	- sex		
	- full name of mother		
	- full name of father		

14	Particular State or Territory law relied on	Not applicable
15	Statement of Claim	Not applicable

G Other court proceedings and orders

16	Are there any family law, domestic violence or child welfare proceedings pending, orders sought, orders made, undertakings to a court or registered agreements concerning a party or child listed above?	MA

H [illegible]

Signed	Solicitor for applicant(s)	Date
	JANE HOBSON	3 16 199

This application was prepared by JANE HOBSON, Solicitor.

I [illegible]

I gave the applicant(s) a copy of the Family Court brochure *Marriage, Families and Separation* ☒

I gave the applicant(s) a copy of the Family Court's mediation services brochure *Pathway to Agreement* ☒

Signature of solicitor	Print full name	Date
	JANE HOBSON	3 16 199

990682

Affidavit of service

Form 22 - Family Law Rules Order 18 rule 15

A	File Number	5-15325/99
B	Filed at (court use only) Filed on	97-99 Goulburn St Sydney
C	Hearing date	16-7-99 9.55

1	Party on whose behalf this document is filed	KANTH	RAJANI KANNEPALLI
2	Name, address and occupation of person serving documents	Orson P. Madsen	Deputy Constable
		7304 So. 300 W Suite 203 Midvale, Utah 84047 USA	postcode
3	Person served	KANTH	CORY LEIGH
4	Date documents served	9 June 1999	
5	What documents were served?	(a) Copy of application for Final Orders stamped with the Court seal (b) Family Court brochure *Marriage, Families and Separation* (Order 25 rule 3)	
6	How were they served on the person?	I handed them to the person at 2736 E. 7305 So. Salt Lake City, Utah 84121	

Asked if person was Cory Leigh Kanth

I swear/affirm that the facts set out are true.

Signature

Sworn/affirmed

Place: 7304 So 300 W #203 Midvale Utah Date: 9 June 1999

Before me (signature of witness)

Full name of witness (please print)

Robert J. Reitz

Justice of the Peace [illegible] specify Notary Public

Page 1

MIDWARE 3006975

M6

I, ORSON MADSEN
being first duly sworn on oath and say: I am a duly appointed Deputy Constable, SALT LAKE County, State of UTAH, a citizen of the United States over the age of 21 years at the time of service herein, and not a part of or interested in the within action

I received the within and hereto annexed,
APPLICATION FOR FINAL ORDERS (FORM 7- FAMILY LAW RULES)
& MARRIAGE, FAMILIES & SEPARATION BROCHER

on June 08, 1999 , and served the same upon
CORY LEIGH KANTH

a within named Defendant in said article(s) by serving a true copy of said article(s) for the defendant with

CORY LEIGH KANTH (PERSONALLY)
a person of suitable age and discretion there residing at
2738 E 7300 S, SOUTH SALT LAKE
his/her usual place of ABODE. on June 08, 1999

I further certify that at the time of service of the said article(s), I endorsed the date and place of service and added my name and official title thereto.

on June 08, 1999

Deputy SL 982

ROBERT J. "BOB" REITZ, CONSTABLE, SALT LAKE County
7304 SOUTH 300 WEST SUITE 203, MIDVALE, UTAH 84047, 255-5468

NOTARY FEE:	5.00
MILEAGE CHARGE:	15.00
SERVICE CHARGES:	6.00
TOTAL CHARGES:	$26.00

NOTES

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS 11th DAY OF June, 1999.

NOTARY PUBLIC

Notary Public
ROBERT J. REITZ
7304 South 300 West, Suite 203
Midvale, Utah 84047
My Commission Expires
January 15, 2000
State of Utah